

In the United States Bankruptcy Court
for the
Southern District of Georgia
Augusta Division

In the matter of:)	
)	Adversary Proceeding
RICHARD BRIAN PATTERSON)	
(Chapter 7 Case <u>00-10686</u>))	Number <u>00-1141</u>
)	
<i>Debtor</i>)	
)	
)	
C. DAVID BUTLER)	
United States Trustee, Region 21)	
)	
<i>Plaintiff</i>)	
)	
)	
v.)	
)	
RICHARD BRIAN PATTERSON)	
)	
<i>Defendant</i>)	

MEMORANDUM AND ORDER

Debtor Richard Brian Patterson (“Debtor”) filed a Chapter 7 bankruptcy case on March 15, 2000. As required by law, Debtor filed Schedule I – Current Income of Individual Debtor (“Schedule I”) and Schedule J – Current Expenditures of Individual Debtor (“Schedule J”), which are annexed to this Order respectively as Exhibits “A” and “B.” Debtor was granted a Chapter 7 discharge on July 14, 2000.

Because of the discrepancies noted between his schedules and his testimony during

the proceedings, the matter was referred to the United States Trustee (“Trustee”) for investigation. Contending that Debtor had understated his true monthly income by \$600.00 per month and overstated his monthly expenses by \$1,100.00, Trustee brought this adversary action on December 26, 2000, seeking a revocation of Debtor’s discharge.

Pursuant to its jurisdiction over this matter as a core proceeding under 28 U.S.C. § 157, and in accordance with Federal Rule of Bankruptcy Procedure 7052(a), the Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

a. Understated income

Debtor’s Schedule I, which requires a debtor to list “estimated average monthly income,” listed a gross income of \$3,615.51 and a net income of \$2,013.17. Trustee’s allegation of understated income derives from the fact that Debtor’s pay stub for the pay period ending on March 18, 2000, three days after he filed his case, suggested that his gross income was actually \$4,227.00. As explanation, Debtor stated that his pay had fluctuated and that the amount of the fluctuation had depended on which shift he worked and the corresponding hourly pay differential that he had received when he did extra night and weekend work as a registered nurse at University Hospital in Augusta, Georgia. Debtor’s pay stub for January 2000, for example, revealed a rate of pay consistent with the \$3,615.00 shown on his schedules. In light of Schedule I’s call for “estimated average” monthly income, I find that Debtor has satisfactorily explained the apparent understatement of his then current income.

b. Overstated expenses

Schedule J, omitting use of the word “estimated,” requires a debtor to list “current expenditures.” Debtor’s Schedule J showed total monthly expenses of \$2,063.00, including rent of \$600.00, utility payments totaling \$320.00, and an automobile payment of \$350.00.

At the creditors’ meeting held pursuant to 11 U.S.C. § 341, Debtor revealed that a number of the expenditures which he had set forth on Schedule J were not his actual current obligations on the date his case was filed. First, although he attributed \$600.00 to monthly rent, he was, in fact, living rent-free in his mother’s home. Second, although he attributed a total of \$320.00 to monthly utility payments, he was, in fact, not incurring utility expenses. Third, although he attributed \$350.00 to monthly automobile expenses, he was not incurring that amount.

As explanation, Debtor contends that his Schedule J disclosures, while not reflective of his actual expenditures on the date he filed, were in fact accurate representations of the expenditures which he expected to incur within a very short and foreseeable time. With respect to the monthly rent, Debtor anticipated that his stay with his mother would be of fairly short duration. Having talked with co-workers and with a realtor and having looked at apartment listings, he believed that the typical monthly rent for an apartment of the type he desired to rent was \$600.00. With respect to the monthly utility payments, although Debtor was not paying any fixed sum to his mother for utilities, he was at time of filing contributing a variable monthly amount approximating \$200.00 toward utility costs, and he estimated that the amount he would need in the near future for electricity, water, sewer, telephone, and cable as \$320.00. With respect to the automobile payment, the amount Debtor listed was less than the amount for which he was obligated. In fact, at time of filing, he was required, pursuant to a divorce decree, to make \$524.00 monthly payments for a vehicle which his former wife had been awarded in the divorce. Finally, Debtor had

begun tithing early in the year 2000 in an amount which he testified approximated more than \$340.00 per month; yet, he had revealed no charitable contributions in Schedule J because at time of filing, he had only a short history of making such contributions.

I find that although Debtor's detailed, line-by-line listings were not accurate, the bottom line total amount of Debtor's revealed monthly expenses of \$2,063.00 was substantially accurate.

CONCLUSIONS OF LAW

11 U.S.C. § 727(a)(4)(A) provides for denial of discharge in a bankruptcy case where the debtor "knowingly and fraudulently" makes a false oath or account, and § 727(d)(1) provides for revocation of a debtor's discharge obtained through the debtor's fraud and which fraud is not discovered until after the discharge had been granted. A false statement in a debtor's schedules is sufficient ground for denial of discharge if the statement was (1) material and (2) knowingly made with fraudulent intent. Walton v. Crosby (In re Crosby), slip op. at 4, Ch. 7 Case No. 91-20963, Adv. No. 92-2073 (Bankr. S.D. Ga. 1993) (citing Chalik v. Moorefield (In re Chalik), 748 F.2d 616, 618 (11th Cir. 1984)). Here, the United States Trustee bears the burden of proving the basis for objection to discharge for fraud, and thereby revocation of discharge, by a preponderance of the evidence. Fed. R. Bankr. P. 4005; Grogan v. Garner, 498 U.S. 279, 287-88, 111 S. Ct. 654, 660, 112 L. Ed. 2d 755 (1991).

a. Fraudulent intent

Debtors are under an affirmative duty to read their bankruptcy schedules and to satisfy themselves that they are true and correct to the best of their knowledge, information and

belief. Walton v. Miles (In re Miles), Ch. 7 Case No. 92-20115, Adv. No. 92-2074, slip op. at 6 (Bankr. S.D. Ga. 1993). A statement on the debtor's petition is *fraudulent*, however, only if the debtor intended to defraud by making a statement which he knew to be false.

I addressed the issue of fraudulent intent in Crosby and in Miles. In Crosby, I found fraudulent intent existed in light of the facts that the debtor "had full knowledge of . . . the effect her disclosure would have," which effect was to inhibit the Chapter 7 Trustee in his efforts to determine whether these assets could be recovered for the benefit of the estate and creditors. Crosby, slip op. at 5. Similarly, in Miles, I found that fraudulent intent existed in light of (1) the debtor's omission of real estate from his schedules and failure to amend his petition and (2) the effect of the misinformation generated by his omissions, which was to lead the trustee to abandon the property and therefore to deny benefit to the estate and creditors. Miles, slip op. at 7.

In the instant case, Trustee must prove Debtor's fraudulent intent by a preponderance of the evidence. Trustee may establish Debtor's intent to defraud by relevant circumstantial evidence, *see id.* at 6¹ ; likewise, Debtor's defense to the fraud allegations may be established by relevant circumstantial evidence.

I conclude that in over-stating his expenses, Debtor lacked the requisite fraudulent intent. Debtor appears to have misunderstood his duty rather than to have avoided or neglected it, as indicated by the types of errors and omissions in his schedules. As one example, Debtor over-

¹ The debtor in Miles, after omitting real property from his schedules, testified that he did not know the value of any of his property, that he did not remember testifying as to the purchase price of his house or when the house was purchased or the asking price, and that although he signed a loan document listing assets and their values, he did not know their value. Debtor's incorrect valuations on his schedules led the trustee to abandon the property from the estate. I revoked Debtor's discharge pursuant to § 727 (d)(1) in that case. Miles, slip op. at 4-5.

stated his literal “current” expenses by listing the amount he expected to pay for an apartment and under-stated his literal “current” expenses by listing the amount he expected to pay monthly to replace a car for which he was paying \$524 rather than the \$350 he listed. In addition, Debtor revealed no charitable contributions in his Schedule J because he had only a fairly short history of making such contributions, where in fact he had begun tithing as of early 2000 in an amount which he testified approximated more than \$340 per month. Also, although Debtor estimated and listed expected future utility expenses that were not current expenses, he omitted stating that he was contributing at that time approximately \$200 per month for utilities to his mother, with whom he was then living. These facts show Debtor’s lack of fraudulent intent with respect to the over-statement of his expenses.

b. Materiality

A statement on the debtor’s petition is material if it concerns the existence and disposition of property. Chalik v. Moorefield (In re Chalik), 748 F.2d 616, 618 (11th Cir. 1984). I found in Crosby that the debtor’s false oath bore a relationship to her business transactions, that it affected the discovery of her assets, and that it also concerned the existence and disposition of property to another debtor. Crosby, slip op. at 5. In the case at hand, the property at issue was cash. In contrast with the Crosby situation, the amount available to creditors did not substantially change by virtue of Debtor’s errors in disclosing his current expenses because the effect of his over and under-statements resulted in actual total current expenditures on the date of filing roughly equal to those in his schedules. Therefore, Debtor’s statements did not substantially affect the disposition of property to creditors.

CONCLUSION

Pursuant to my findings that Debtor satisfactorily explained the apparent understatement of his then current income, that he lacked fraudulent intent with respect to the overstatements of his expenses, and that his statements did not substantially affect the disposition of property to creditors, I conclude that Trustee has not proved, under the unique facts of this case, that Debtor had the requisite fraudulent intent or that Debtor's omissions and misstatements on Schedules I and J were material.

I emphasize, however, that the contention of the United States Trustee that a Schedule J should disclose actual current expenses as of the date of filing, not future estimates, is correct. Counsel for Debtor has asserted forcefully that counsel are subject to criticism if they prepare schedules which are literally accurate when prepared, but foreseeably misleading due to anticipated changes. Since the schedules do not call for "estimated" expenses, such information, which should be disclosed if known, should be included in an addendum to Schedule J.

ORDER

Pursuant to the foregoing, the United States Trustee's Complaint to Revoke Discharge in Debtor's Chapter 7 case IS DENIED.

Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This ____ day of February, 2002.